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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

KENNETH FREDERICK JONES, Plaintiff and Appellant, v. WELLS FARGO BANK, N.A. et al., Defendants and Respondents.	H043954; H045165 (Monterey County Super. Ct. Nos. 16CV000363, 16CV003114)

Plaintiff Kenneth Frederick Jones appeals from judgments entered in favor of defendants Wells Fargo Bank, N.A. and U.S. Bank (hereafter collectively the Banks) after the trial court sustained the Banks' demurrers to his two separate complaints without leave to amend.[1]

In Monterey County Superior Court No. 16CV000363 (the '0363 Action), Jones alleged that the Banks engaged in conduct which constituted false advertising, restraint of trade, and unlawful discrimination under certain California statutes.

In Monterey County Superior Court No. 16CV003114 (the '3114 Action), Jones also alleged that the Banks engaged in conduct which constituted false advertising, restraint of trade, and unlawful discrimination. He further alleged that the Banks' conduct amounted to elder abuse and false imprisonment.

[1] On December 7, 2018, we ordered the two appeals in *Jones v. Wells Fargo Bank, N.A. et al.* (H043954) and *Jones v. Wells Fargo Bank N.A. et al.* (H045165) considered together for the purpose of oral argument and disposition.

For the reasons expressed herein, we find no error and will affirm the judgments.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The '0363 Action

According to the complaint, Jones has owned a property in Monterey County, which he describes as a "ranch/home/vineyard/winery," since 1991. Since acquiring it, he has "buil[t] substantial equity" in the property, "perform[ing] 90 percent of the labor himself." In 2008 and again in 2009, he sought a jumbo reverse mortgage from Wells Fargo Bank, N.A., but for reasons which the complaint does not make entirely clear, was unsuccessful. He filed suit against Wells Fargo, apparently in 2009, and the "litigation dragged on for four years," causing serious health problems. He eventually settled that case in May 2013.

In 2014, Jones filed for chapter 13 bankruptcy after failing to sell his property. During the pendency of the bankruptcy, Jones continued his efforts to sell the property. The Banks advertised trustee sales of the property, but on the advertised sales date, would postpone that sale for several weeks. After his chapter 13 bankruptcy petition was dismissed, the Banks again issued a notice of trustee sale. Jones then filed for chapter 7 bankruptcy.

In support of his first cause of action for "violation of . . . Civil Code [section] 2924g, violation of truth in advertising, restraint of trade," Jones alleges that the Banks continued their prior practice of advertising the trustee sale of the property, then postponing the sales date when the initially advertised date arrived. By doing so, he asserts the Banks engaged in false advertising and restraint of trade in violation of Civil Code section 2924g, as well as Business and Professions Code sections 17200 and 17500, by advertising property for sale knowing it could not be sold due to the pending bankruptcy.

Jones' second cause of action for violation of the Unruh Civil Rights Act (Civ. Code, §§ 51, 52) (Unruh Act) is based on his allegations that the Banks unlawfully

discriminated against him because he has equity in his property and thus does not qualify for their short sale program. Jones alleges the Banks will only assist homeowners through the short sale program if the property is valued at less than the amount of the outstanding loan.

The Banks' demurrer to the complaint was sustained by the trial court without leave to amend by written order filed June 29, 2016. Judgment of dismissal was entered on July 12, 2016 and Jones timely appealed.

B. The '3114 Action

Jones filed the first amended complaint in the '3114 Action on November 15, 2016. In it, he reiterates many of the allegations set forth in the '0363 Action, describing the property in which he "spent the last 25 years building substantial equity" performing "90 percent of the labor himself." He again describes his efforts to obtain a reverse mortgage in 2008, leading to litigation, leading to a 2013 settlement. He notes that during his chapter 13 bankruptcy proceedings, the Banks repeatedly noticed, then postponed, trustee's sales of the property.

The Banks continued this practice of noticing and postponing trustee's sales after Jones filed for chapter 7 bankruptcy. As it did in the '0363 Action, this conduct forms the basis for his first cause of action for "violation of California Business and Profession[s] Codes: Truth in Advertising, restraint of trade." According to Jones, by representing that the property would be sold, knowing it could not be due to the pending bankruptcy proceedings, the Banks engaged in false advertising and unlawful restraint of trade.

In support of the second cause of action for elder abuse, Jones alleges the Banks' conduct of noticing and postponing the sale of the property caused him undue, severe stress and endangered his health. He further alleges that these actions constitute a criminal threat under Penal Code section 422.

Jones' third cause of action is for false imprisonment. He alleges that since filing for bankruptcy in 2015, he "has lived in abject poverty." By "[r]estricting the sale of his property," the Banks made him "a virtual prisoner." He alleges his medical and other expenses made it so he cannot afford to "fill the propane tank for hot water."

Finally, Jones' fourth cause of action for violation of the Unruh Act is based on the same allegations he made in the '0363 Action. Specifically, that the Banks are engaged in unlawful discrimination against homeowners, like himself, who have equity in their property.

The Banks' demurrer to the first amended complaint was sustained without leave to amend by written order filed May 17, 2017.[2] Judgment of dismissal was entered on August 16, 2017 and Jones timely appealed.

C. Motion to amend the '3114 Action

Jones sought leave to add four causes of action in a proposed second amended complaint, all of which were based on "events that occurred in the last few weeks," i.e., between the November 30, 2016 trustee sale and January 31, 2017. The causes of action were: (1) "bad faith negotiations (double tracking)"; (2) elder abuse; (3) unjust enrichment; and (4) "breach of contract financial elder abuse."[3]

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[2] In the same order, the trial court denied Jones' motion for leave to file a second amended complaint. Jones' motion, discussed in greater detail below, was filed contemporaneously with his opposition to the Banks' demurrer to the first amended complaint in the '3114 Action.

[3] In his opening brief in connection with the '3114 Action, Jones makes no arguments in support of his proposed new causes of action for "bad faith negotiations (double tracking)" and unjust enrichment. "Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) We deem that Jones has waived any claim of error as to those causes of action, so we do not address them further.

The proposed sixth cause of action for elder abuse alleges that Jones' blood pressure spiked to dangerous levels (195/118) upon being served with the notice to vacate on December 31, 2016. He states the stress of that event caused several new physical problems, such as numbness in his lower extremities, double vision, and cramping fingers.

The proposed eighth cause of action alleges that Jones entered into a verbal contract with a real estate agent, Mark Hazell, to sell the property, with a sales price listed at "$1,1888,00. [*Sic*.]" Jones put Hazell in contact with the bankruptcy trustee in order to facilitate the sale, but alleges that Hazell began to "lay a case that the property was only worth consideration as bare land" in order to secure a "two sided commission." According to Jones, Hazell "did not perform according to the verbal contract" depriving Jones of the proceeds of the sale of his property.

After a hearing, the trial court denied the motion for leave to file the proposed second amended complaint on May 17, 2017.

II. DISCUSSION

A. Jones' motion for judicial notice in relation to the '0363 Action[4]

Jones moved for judicial notice of the following documents:

1. Docket entries from Jones' Chapter 7 bankruptcy proceeding (*In re Ken Jones* (Bankr. N.D.Cal. 2015, No. 15-52682) (hereafter the Chapter 7 bankruptcy);

2. April 4, 2017 final decree in the Chapter 7 bankruptcy proceeding;

3. Appraisal of the property, attached as an exhibit to a motion filed in the '3114 Action;

[4] Jones' motion was filed on May 10, 2017 and, by separate order dated May 18, 2017, we deferred resolution of the motion for consideration with the appeal. By order dated April 3, 2017, we granted the Banks' motion for judicial notice in its entirety.

4. E-mails exchanged between Jones and a realtor, attached as an exhibit to a motion filed in the ’3114 Action;

5. E-mails regarding a Zillow estimate of the property’s value, attached as an exhibit to a motion filed in the ’3114 Action;

6. April 3, 2017 stipulation for entry of judgment in an unlawful detainer proceeding (*U.S. Bank, N.A. v. Kenneth Frederick Jones* (Super. Ct. Monterey, 2017) No. 17CV000269).

Jones argues that exhibits 1 and 2, relating to his Chapter 7 bankruptcy filing, are relevant to the question of standing. Exhibits 3, 4, and 5 are relevant, according to Jones, as they support his contention that the property has a value of at least $1.3 million. These documents were also attached as exhibits to the first amended complaint in the ’3114 Action. Finally, Jones claims that exhibit 6 “supports the unjust enrichment that the banks have achieved and the great hardship that is about to fall upon” him.

“Reviewing courts generally do not take judicial notice of evidence not presented to the trial court.” (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) “While we may take judicial notice of the *existence* of judicial opinions, court documents, and verdicts reached, we cannot take judicial notice of the truth of hearsay statements in other decisions or court files [citation], or of the truth of factual findings made in another action.” (*Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 768.) Judicial notice should be taken only of relevant matters. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1; *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569.)

With these principles in mind, we grant Jones’ motion in part and will take judicial notice of exhibits 1, 2, 3, 4, and 5. We deny the motion as to exhibit 6, which is not relevant to the issue presented on appeal, i.e., whether the allegations of Jones’ complaints are sufficient to state a cause of action.

B. Jones' motion for judicial notice in relation to the '3114 Action[5]

In this motion, Jones asks that the court take judicial notice of: (1) all of the exhibits attached to the first amended complaint in the '3114 Action; and (2) all of the exhibits which were attached to his motion for leave to amend the first amended complaint. Jones states that all of these exhibits were filed with the trial court, but for unexplained reasons, not contained in the court's records.

Since these exhibits were filed in the trial court as part of Jones' first amended complaint and his motion for leave to amend, they are rightfully part of the official record on appeal. Accordingly, we treat the motion for judicial notice as a motion to augment the record under California Rules of Court, rule 8.155(a)(1), and grant the motion in its entirety.

C. Standard of review

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, our review is de novo. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) In performing our independent review of the complaint, we assume the truth of all facts properly pleaded by the plaintiff. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) "We also accept as true all facts that may be implied or reasonably inferred from those expressly alleged." (*Rotolo v. San Jose Sports & Entertainment, LLC* (2007) 151 Cal.App.4th 307, 320-321, disapproved on another ground in *Verdugo v. Target Corp*. (2014) 59 Cal.4th 312, 334.) Further, "we give the complaint a reasonable interpretation, and read it in context." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*).) We do not, however, assume the truth of " ' "contentions, deductions or conclusions of fact or law." ' " (*Evans, supra*, at p. 6.)

[5] Jones' motion was filed on July 5, 2018 and, by separate order dated July 10, 2018, we deferred resolution of the motion for consideration with the appeal.

Again, we also consider matters that may be judicially noticed and facts appearing in any exhibits attached to the complaint. (Code Civ. Proc., § 430.30, subd. (a); *Schifando, supra,* 31 Cal.4th at p. 1081; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 225, fn. 1.) After reviewing the allegations of the complaint, the complaint's exhibits, and the matters properly subject to judicial notice, we exercise our independent judgment as to whether the complaint states a cause of action as a matter of law. (See *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.)

D. Legal principles relating to standing in bankruptcy proceedings

It has long been the rule that "a general demurrer for failure to state a cause of action should be sustained where the complaint may state a cause of action in someone, but not in the plaintiff." (*Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 19.) " 'In the context of bankruptcy proceedings, it is well understood that "a trustee, as the representative of the bankruptcy estate, is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate once the bankruptcy petition has been filed." ' " (*M&M Foods, Inc. v. Pacific American Fish Co., Inc.* (2011) 196 Cal.App.4th 554, 562 (*M&M*); *Reichert v. General Ins. Co.* (1968) 68 Cal.2d 822, 829-830, 833 (*Reichert*).)

The filing of a petition in bankruptcy creates a bankruptcy estate that includes "all legal or equitable interests of the debtor in property as of the commencement of the case." (11 U.S.C. § 541(a)(1).) These interests "include choses in action and claims by the debtor against others." (Historical and Statutory Notes to 11 U.S.C. § 541; see *Reichert, supra,* 68 Cal.2d at pp. 829-830.) Where events that give rise to a cause of action occur following the filing of the chapter 7 petition, that cause of action is not property of the bankruptcy estate unless it constitutes "[p]roceeds, product, [or] offspring . . . of or from property of the estate" (11 U.S.C. § 541(a)(6)) or "[a]ny interest in property that the estate acquires after the commencement of the case." (11 U.S.C. § 541(a)(7); *Haley v.*

Dow Lewis Motors, Inc. (1999) 72 Cal.App.4th 497, 504 (*Haley*) [wrongful termination claims that arose postpetition did not belong to bankruptcy estate]; *Bostanian v. Liberty Savings Bank* (1997) 52 Cal.App.4th 1075, 1084 (*Bostanian*) [appeal dismissed for lack of standing because cause of action challenging foreclosure sale arose from the plaintiffs' interest in their residence and was therefore property of the bankruptcy estate]; *In re Grosse* (E.D. Pa. 1984) 44 B.R. 200, 201-202 ["The property allegedly appropriated postpetition by the defendants was property of the estate as of the filing of the petition while the cause of action which arose on the purported conversion was a 'product' of that property within the meaning of § 541(a)(6)."].)

"[T]he 'bankruptcy code place[s] an affirmative duty on [the debtor] to schedule his assets and liabilities. [Citation.] . . . [¶] "The debtor has a duty to *prepare schedules carefully, completely, and accurately*." ' " (*M&M, supra,* 196 Cal.App.4th at pp. 563-564, citations omitted.) " '[I]t is very important that a debtor's bankruptcy schedules and statement of affairs be as accurate as possible, because that is the initial information on which all creditors rely.' " (*Hamilton v. State Farm Fire & Cas. Co*. (9th Cir. 2001) 270 F.3d 778, 785.) "These matters are at the heart of the bankruptcy system, and their importance . . . can hardly be understated. The proper 'operation of the bankruptcy system depends on honest reporting.' " (*In re Mohring* (E.D. Ca. 1992) 142 B.R. 389, 394.)

"Causes of action are separate assets which must be formally listed." (*Cusano v. Klein* (9th Cir. 2001) 264 F.3d 936, 947 (*Cusano*).) "[A] chapter 7 debtor may not prosecute on his or her own a cause of action belonging to the bankruptcy estate unless the claim has been abandoned by the trustee." (*Bostanian, supra,* 52 Cal.App.4th at p. 1081.) "Property of a bankruptcy estate can be abandoned by three methods: (1) after notice and hearing, the trustee may unilaterally abandon property that is 'burdensome . . . or . . . of inconsequential value' (11 U.S.C. § 554(a)); (2) after notice and hearing, the court may order the trustee to abandon such property (11 U.S.C. § 554(b)); [and] (3) any

property *which has been scheduled*, but which has not been administered by the trustee at the time of closing of a case, is abandoned by operation of law. (11 U.S.C. § 554(c).)" (*Cloud v. Northrop Grumman Corp*. (1998) 67 Cal.App.4th 995, 1003.)

" 'An outstanding legal claim that is abandoned by the trustee reverts back to the original debtor-plaintiff.' " (*M&M, supra*, 196 Cal.App.4th at p. 563.) "But property not formally scheduled in the bankruptcy proceeding is *not abandoned* at the close of the bankruptcy proceeding . . . ." (*Ibid*.; 11 U.S.C. § 554(d).) It remains property of the bankruptcy estate even after the debtor receives a discharge in bankruptcy. (11 U.S.C. § 554(d); *Cusano*, *supra*, 264 F.3d at p. 948.) The debtor has no standing to assert those causes of action unless he takes affirmative action to reopen his bankruptcy case. (11 U.S.C. § 350(b); Fed. Rules Bankr.Proc. Rule 5010, 11 U.S.C.; see *In re JZ L.L.C.* (9th Cir. 2007) 371 B.R. 412, 418-419.)

With the above principles in mind, we examine the claims asserted by Jones in both the '0363 Action and the '3114 Action. Because both complaints set forth claims of false advertising, restraint of trade, and unlawful discrimination and those claims are supported by nearly-identical allegations in the separate pleadings, we will address them together below.

E. Alleged violations of Civil Code section 2924g, Business and Professions Code sections 17200 and 17500

In support of this cause of action, Jones alleged that, after his previous chapter 13 bankruptcy petition was dismissed, the "[B]anks . . . again resume[d] foreclosure" and thus he "had no recourse but to file a Chapter 7 bankruptcy which provides for a trustee assisted sale of his property." Despite knowing that the property could not be sold without first lifting the automatic stay, the Banks repeatedly postponed the trustee's sale rather than cancelling it outright. Jones alleged that these actions amounted to the Banks making false advertisements, thus violating Civil Code section 2924g, and Business and Professions Code sections 17200 and 17500. According to Jones, the Banks knew that

prospective buyers would be discouraged by the continual postponements and give up hope of acquiring the property, allowing the Banks to eventually purchase it at less than fair market value.

In both complaints, the actions Jones complains of all took place *after* he filed for Chapter 7 bankruptcy. Consequently, his purported causes of action for violations of Civil Code section 2924g and Business and Professions Code sections 17200 and 17500 were not property of the bankruptcy estate unless they were a " '[p]roceed[], product, [or] offspring' " of estate property. (*Haley*, *supra*, 72 Cal.App.4th at p. 504; *Bostanian*, *supra*, 52 Cal.App.4th at p. 1084; 11 U.S.C. § 541(a)(1), (a)(7).) Since Jones is alleging that the Banks' conduct negatively impacted the value of the property, these alleged statutory violations arise from his monetary interest in the property and are thus part of the bankruptcy estate. Accordingly, Jones does not have standing to assert those claims, and the trial court properly sustained the Banks' demurrers to this cause of action as set forth in both the '0363 Action and the '3114 Action.

F. Alleged violation of the Unruh Act

The second identical cause of action Jones alleges in both the '0363 Action and the '3114 Action is for unlawful discrimination under the Unruh Act (Civ. Code, § 51 et seq.). In the complaints, Jones alleges the Banks have violated the Unruh Act by unfairly discriminating against mortgagors whose equity in the secured property is greater than the amount owed on the mortgage. He asserts that this is discriminatory because the Banks have a process for working with debtors where the amount owed is greater than the fair market value of the property, specifically by arranging for a short sale of the property.

"The Unruh Civil Rights Act prohibits discrimination based on a person's membership in a particular group: 'All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to

the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.' (Civ. Code, § 51, subd. (b).) 'Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to [the act]' is liable for damages and penalties. (Civ. Code, § 52, subd. (a).)" (*Turner v. Association of American Medical Colleges* (2008) 167 Cal.App.4th 1401, 1407-1408.)

In *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142 (*Harris*), the California Supreme Court examined whether the Unruh Act extends to claims of discrimination based on economic or financial distinctions. The Supreme Court held that any such discrimination would not violate the Unruh Act so long as it was based on "a financial criterion of customer selection that applies uniformly and neutrally to all persons *regardless of personal characteristics*." (*Harris*, *supra*, at p. 1169, italics added.)

Jones does not allege that the Banks' purported practice (i.e., excluding borrowers whose equity exceeds the amount owed) does not "appl[y] uniformly and neutrally to all persons regardless of personal characteristics." (*Harris*, *supra*, 52 Cal.3d at p. 1169.) The distinction Jones complains of is between borrowers whose property value has dropped below the amount owed on their mortgage versus borrowers whose property value exceeds the amount owed. This is a purely economic distinction. Jones does not identify how the distinction discriminates based on personal, as opposed to financial, characteristics nor does he advance any rationale for applying the Unruh Act to protect borrowers in the latter category.

Accordingly, the trial court did not err in sustaining the Banks' demurrers for failure to state a cause of action.

G. Elder abuse and criminal threats

In the '3114 Action, Jones' second cause of action alleges that the Banks' actions in repeatedly noticing, then postponing, the trustee's sale has caused him tremendous

stress and serious medical problems amounting to unlawful elder abuse (Pen. Code, § 368). He further alleges that by "[p]osting a notice of trustee sale" the Banks have made a criminal threat in violation of Penal Code section 422. Finally, Jones alleges that the Banks' actions are "an abuse of their power-undue influence. [*Sic*.]"

To the extent that Jones alleges civil causes of action for criminal elder abuse under Penal Code section 368 and criminal threats under Penal Code section 422, nothing in either statute authorizes a private right of action. "A violation of a state statute does not necessarily give rise to a private cause of action. [Citation.] Instead, whether a party has a right to sue depends on whether the Legislature has 'manifested an intent to create such a private cause of action' under the statute. [Citations.] Such legislative intent, if any, is revealed through the language of the statute and its legislative history." (*Lu v. Hawaiian Gardens Casino, Inc*. (2010) 50 Cal.4th 592, 596.) Instead, civil remedies for financial or physical abuse of an elder are provided under the California Elder Abuse Act. (Welf. & Inst. Code, §§ 15610.07, subd. (a)(1), (3), 15610.30.) We now examine whether Jones' allegations are sufficient to state a cause of action under this Act.

Welfare and Institutions Code section 15610.30, subdivision (a) provides: " 'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: [¶] (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70."

The general rule is that "[i]t is simply not tortious for a commercial lender to lend money, take collateral, or to foreclose on collateral when a debt is not paid." (*Sierra-Bay Fed. Land Bank Assn. v. Superior Court* (1991) 227 Cal.App.3d 318, 334.)

The allegations of the first amended complaint and the matters properly subject to judicial notice make clear that the Banks were simply protecting their right to foreclose on Jones' property after he defaulted on his mortgage. The Banks' actions of posting notices of trustee's sales and then postponing them while Jones' bankruptcy proceedings were pending does not state sufficient facts to support a cause of action for financial elder abuse under Welfare and Institutions Code section 15610.30.

We further find that the allegations are insufficient to state a claim for physical abuse of an elder under Welfare and Institutions Code section 15610.07, subdivision (a)(1). Under the Elder Abuse Act, " '[p]hysical abuse' means any of the following: [¶] (a) Assault, . . . [¶] (b) Battery, . . . [¶] (c) Assault with a deadly weapon or force likely to produce great bodily injury, . . . [¶] (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water. [¶] (e) Sexual assault, . . . [¶] . . . [¶] (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions: [¶] (1) For punishment. [¶] (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given. [¶] (3) For any purpose not authorized by the physician and surgeon." (Welf. & Inst. Code, § 15610.63.) Jones alleges that the Banks' actions caused him severe stress and anxiety, which led to a multitude of physical ailments, but there are no allegations that the Banks or their agents committed any acts which constitute "physical abuse" as defined in the Elder Abuse Act.

We conclude the trial court did not err in sustaining the Banks' demurrer to Jones' second cause of action as pleaded in the '3114 Action.

H. False imprisonment

The third cause of action alleges that by "[r]estricting the sale of his property," depriving him of "$500,000 in equity," the Banks made him a "virtual prisoner" due to increased medical and other expenses that he cannot afford.

" 'False imprisonment involves the intentional confinement of another against the person's will. The elements are (1) nonconsensual, intentional confinement of a person, (2) without lawful privilege, (3) for an appreciable period of time, however brief.' " (*Bocanegra v. Jakubowski* (2015) 241 Cal.App.4th 848, 855.) While we have found no case addressing the question, it appears beyond dispute that to constitute actionable false imprisonment, a person must suffer *actual, physical* confinement. Jones has alleged only that the Banks' conduct made him a "virtual prisoner." We decline Jones' invitation to extend liability for false imprisonment to something other than actual confinement of a person.

Accordingly, since Jones has not and cannot allege that the Banks wrongfully, physically confined him, the trial court did not err in sustaining the demurrer to this cause of action based on insufficient facts.

I. Request for statement of decision in '3114 Action

In addition to the other issues raised, Jones also contends the trial court committed reversible error in failing to issue a statement of decision in connection with the Banks' demurrer to his first amended complaint.

We find no error, as a statement of decision is not required upon the sustaining of a demurrer. Code of Civil Procedure section 472d applies to orders sustaining demurrers, and it provides in pertinent part, "Whenever a demurrer in any action or proceeding is sustained, the court shall include in its decision or order a statement of the specific ground or grounds upon which the decision or order is based which may be by reference to appropriate pages and paragraphs of the demurrer." (Code Civ. Proc., § 472d.) Here, the court stated its reasons in its order, and a statement or memorandum of decision is not required by the statute. (*Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931, 943.)

J. No error in sustaining demurrers without leave to amend

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, the plaintiff "must show in what manner he can amend his complaint and how that amendment will change the legal effect of the pleading." (*Cooper v. Leslie Salt Co*. (1969) 70 Cal.2d 627, 636.)

Jones has not done so here. In both appeals, his opening briefs simply assert that the demurrers should have been overruled.[6] It is only in his reply brief in the '0363 Action that Jones suggests, as an alternative to overruling the demurrer, that he be given leave to amend. However, he does not explain *how* he could amend his complaint to cure the lack of standing or to state facts sufficient to allege a violation of the Unruh Act. Consequently, the trial court did not err in sustaining the Banks' demurrers to the complaints without leave to amend.

K. No error in denying motion to amend in the '3114 Action

We review the trial court's denial of a motion for leave to file an amended pleading for an abuse of discretion. (*Baranchik v. Fizulich* (2017) 10 Cal.App.5th 1210, 1217.) It is the appellant's burden to affirmatively show error, as we start from the presumption that the trial court's ruling is correct. (*Ibid*.)

Jones' proposed sixth cause of action for elder abuse as set forth in his motion for leave to file a second amended complaint does not state a cause of action for the same reasons that those causes of action fail in both the '0363 Action and the '3114 Action. Jones does not allege that the Banks or their agents committed any acts meeting the definition of "physical abuse" under the Elder Abuse Act.

As to the proposed eighth cause of action, the trial court did not abuse its discretion by denying Jones leave to amend because that cause of action is entirely

[6] Jones does argue that the trial court erred in denying his motion for leave to file a second amended complaint in the '3114 Action and we address those arguments below.

irrelevant to the claims Jones brought against the Banks. Jones does not allege that Mark Hazell, the real estate agent, was in any way affiliated with the Banks. To the extent that Jones has a cause of action against Hazell for breach of any purported oral contract to sell the property,[7] he must bring that action separately against Hazell.

We find the trial court did not abuse its discretion in denying Jones' motion for leave to amend the '3114 Action.

III. DISPOSITION

The judgments are affirmed. Respondents are entitled to their costs on appeal.

[7] We note in passing that any such oral agreement would presumably be invalid under the statute of frauds. (Civ. Code, § 1624, subd. (a)(4).)

Grover, J.

WE CONCUR:

Greenwood, P.J.

Danner, J.

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